



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

Adams County Health and Human Services, Petitioner

vs.

DECISION

Case #: FOF - 160938

██████████, Respondent

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Pursuant to petition filed September 29, 2014, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Adams County Health and Human Services to disqualify ██████████ from receiving FoodShare benefits (FS) for one year, a hearing was held on Thursday, November 13, 2014 at 10:30 AM, at Friendship, Wisconsin.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Alex Premo on behalf of

Adams County Health and Human Services  
108 E North Street  
Friendship, WI 53934-9443

Respondent:

██████████  
████████████████████  
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**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Respondent (CARES # ██████████) was at all times relevant here a resident of Adams County who received FoodShare benefits in that county.
2. On October 1, 2014 Petitioner sent Respondent an Administrative Disqualification Hearing Notice alleging that Respondent violated FoodShare program regulation by failing to report that he and the

mother of his children, AW, were living together. Both had separate open FoodShare cases. The period of time involved is noted to be May 1, 2010 through May 31, 2014. A separate IPV sanction is sought against AW and is the subject of a separate petition and Division of Hearings and Appeals decision – case # FOF-160937.

3. HC's probation agent confirms that HC and Respondent were residing together as of late April 2013. Respondent and HC together signed a residential rental contract on June 14, 2013.
4. Respondent completed a FoodShare registration form on November 8, 2013 and reported an address different than that reported to his probation officer and different than shown on the June 2013 rental contract. He did not report that he and AW were together on an April 2014 six month report form. Further, an October 2013 phone call by Respondent to the Adams County Sheriff's Department notes his address to be the same as AW's.
5. The respondent failed to appear for the scheduled November 13, 2014 Intentional Program Violation (IPV) hearing and did not provide any good cause for said failure to appear.

### **DISCUSSION**

An intentional program violation of the FoodShare program occurs when a recipient intentionally does the following:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts;  
or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

*FoodShare Wisconsin Handbook*, § 3.14.1; see also 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 946.92(2).

An intentional program violation can be proven by a court order, a diversion agreement entered into with the local district attorney, a waiver of a right to a hearing, or an administrative disqualification hearing, *FoodShare Wisconsin Handbook*, § 3.14.1. The petitioner can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Those disqualified on grounds involving the improper transfer of FS benefits are ineligible to participate in the FoodShare program for one year for the first violation, two years for the second violation, and permanently for the third violation. Although other family members cannot be disqualified, their monthly allotments will be reduced unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter. 7 C.F.R. § 273.16(b).

In order for the petitioner to establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit a program violation per 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

*Kuehn*, 11 Wis.2d at 26.

*Wisconsin Jury Instruction – Civil 205* is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4<sup>th</sup> ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence, a firm conviction as to the existence of each of the two elements even though there may exist a reasonable doubt that the opposite is true.

In order to prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact. *State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. *See, John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus, there must be clear and convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

Based upon the record before me, I find that Petitioner has established by clear and convincing evidence that the Respondent intentionally violated FoodShare program rules. I do note, however, that the Administrative Disqualification Hearing Notice notes a time period of May 1, 2010 through May 31, 2014. The evidence presented in this case does not support the allegation that the period that this couple lived together began in 2010; regardless, it is clear that they were living together of late April 2013. This was not reported and both continued to receive FoodShare benefits as separate FoodShare households. This violation was the first such violation committed by Respondent. Therefore, Petitioner correctly seeks to disqualify the respondent from the FoodShare program for one year.

### **CONCLUSIONS OF LAW**

1. That Respondent violated, and intended to violate, the FoodShare program rule specifying that FoodShare recipients not conceal or withhold facts.
2. That the violation specified in Conclusion of Law No. 1 is the first such violation committed by Respondent.

**NOW, THEREFORE,** it is

**ORDERED**

That Petitioner’s determination is sustained, and that Petitioner may make a finding that Respondent committed a first IPV of the FoodShare program and disqualify Respondent from the program for one year, effective the first month following the date of receipt of this decision.

## **REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR**

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 16th day of December, 2014

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals

c: Capital Consortium - email  
Public Assistance Collection Unit - email  
Division of Health Care Access and Accountability - email  
Alex Premo - email



## **State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAMail@wisconsin.gov](mailto:DHAMail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 16, 2014.

Adams County Health and Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[premo@countyofdane.com](mailto:premo@countyofdane.com)